

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MATTHEW MERZ,

Plaintiff,

v.

CITY OF KALAMA, et al.,

Defendants.

CASE NO. C24-5588 BHS

ORDER

THIS MATTER is before the Court on pro se plaintiff Matthew Merz's motions (1) for leave to file overlength motions and briefs, Dkt. 47, (2) for relief from deadline, to excuse his late filing, Dkt. 53, and (3) his motion to strike, contained in his surreply, Dkt. 58, in opposition to defendants' second motion for judgment on the pleadings, Dkt. 45.

Defendants' substantive motion was filed April 30, 2025, and properly noted for May 28. Under Local Rule 7(d)(4), Merz's opposition was due May 21, and under LCR 7(e)(3), was to be a maximum of 8400 words. Under LCR 7(f)(1), Merz's motion for leave to file an overlength, 36-page response to the defendants' motion was due three days *before* the due date for the filing, or May 18.

1 Merz filed his motion for leave to file an overlength brief, and his 9940-word
2 brief, on May 26. Dkts. 47 and 48. Defendants correctly noted the late filing, Dkt. 49, and
3 Merz responded that his response was due on “the Monday before the noting date,” citing
4 an outdated version of this District’s local Rules. Dkt. 50. His second motion, asking the
5 Court to accept his late filings, recognizes his error, and argues that defendants have
6 suffered no prejudice and that striking his brief would “elevate form over substance.”
7 Dkt. 53 at 4.

8 Merz is proceeding pro se, and his brief is neither tediously long nor unduly late.
9 His motions for leave to file an overlength and untimely opposition, Dkts. 47 and 53, are
10 **GRANTED**. The Court will consider Merz’s brief in evaluating defendants’ second
11 motion for judgment on the pleadings.

12 Merz’s motion to strike asserts that defendants’ Reply, Dkt. 51, improperly “raises
13 arguments not asserted in their motion”—namely, that his opposition was too long and
14 too late. Dkt. 58 at 2 (citing *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (the
15 district court need not consider arguments raised for the first time in a reply brief)). He
16 argues that “Courts generally disfavor raising new dispositive arguments in a reply brief
17 because it deprives the opposing party of a fair opportunity to respond.” *Id.* (citing *United*
18 *States v. Rearden*, 349 F.3d 608, 614 n.2 (9th Cir. 2003); and *Provenz v. Miller*, 102 F.3d
19 1478, 1483 (9th Cir. 1996).

20 Nothing in these authorities suggests that a moving party cannot point out to the
21 Court that the responding party’s brief is improper. Merz’s reading of the Rule to
22 preclude any objection to his late filing is nonsensical; it would “elevate form over

1 substance” and ignore common sense. His motion to strike based on this argument is
2 **DENIED.**

3 Merz’s objection to the defendants’ Reply argument that he has again cited to
4 fabricated authority makes even less sense. *See* Dkt. 51 at 3 (pointing out that Merz’s
5 opposition relies on a fabricated case, *Sorensen v. City of Bellingham*, 15 Wn. App. 2d
6 730, 733, 478 P.3d 1110 (2020)). Merz asserts that defendants are powerless to complain
7 about his fabrications, because they did not object to them before he made them. Dkt. 58
8 at 3 (“[Plaintiff’s fabricating a citation] was not addressed in Defendants’ [motion] and
9 represents an improper new factual and legal allegation raised in reply.”). It is unclear
10 whether this argument is also AI-generated, but it is specious. A party obviously cannot
11 object to an improper or dishonest response before he receives it, and nothing in any of
12 the (real) authority Merz cites supports such a rule. The Motion to Strike this argument is
13 **DENIED.**

14 The defendants’ substantive motion, Dkt. 45, will be addressed in a separate order.
15 The Court is unlikely to consider any additional motions before that motion is decided.

16 IT IS SO ORDERED.

17 Dated this 1st day of July, 2025.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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